

# REVIEW OF THE NEW COUNTY COURT LAW

KENNETH A. ROBINSON\*

Effective January 1, 1958 justice of the peace courts will be abolished in Ohio and will be replaced by new courts to be known as county courts. This change will be brought about as a result of the enactment by the 102nd General Assembly of Amended House Bill No. 914 and Amended House Bill No. 937 in 1957.

Although the question of the replacing of justice of the peace courts with some other form of minor court had been under serious consideration for some time, the need for immediate action in this regard arose when the Ohio Supreme Court in 1957 held that section 1907.47 of the Revised Code as enacted by the 101st General Assembly in 1955 was unconstitutional.<sup>1</sup> Under this section the board of county commissioners was empowered to fix the annual salary of each justice of the peace in the county. The court held that giving this power to the county commissioners was a delegation of legislative authority and thus in conflict with Section 26 of Article II of the Ohio Constitution.

Since the payment of justices of the peace by the fee system had been abolished in 1955,<sup>2</sup> the invalidating of the salary provision left the justices of the peace with no means of being compensated for their work, and presented a challenge to the Legislature to find an answer to this pressing problem.

The Legislature was not unaware of the constitutional problem existing in the sections which authorized the county commissioners to fix the salary of the justice of the peace, and had under consideration Amended House Bill No. 914 and Amended House Bill No. 937 when the decision in *Neff v. Board of County Commissioners* was announced. The proposals contained in these bills sought to meet the constitutional problems existing in the justice of the peace system but abolishing of the old system was still a very controversial issue.

After due consideration of all aspects of the situation it was determined that instead of attempting to amend the justice of the peace laws to comply with the decision in the above-mentioned case it would be better to abolish the justice court outright and to create a new court in its place. The moving thought behind the creation of a new court was that with a new name and with certain new provisions in the law the new court would command greater respect and provide a better forum for justice than the justice court had been. Under the old justice of the

---

\*Member of the Ohio Bar; State Representative of Marion, Ohio; Chairman, House Judiciary Committee; Sponsor, H.B. 914 and 937, 102nd General Assembly.

<sup>1</sup> *Neff v. Board of County Commissioners*, 166 Ohio St. 360, 142 N.E. 2d 658 (1957).

<sup>2</sup> Am. S. B. No. 319 (1955) repealed the fee system which had been attacked in *Toomey v. Ohio*, 273 U.S. 510 (1927), but which had remained in effect until 1955.

peace system some 2,200 justices were authorized. This number was substantially reduced by the 1955 enactment, to approximately 800 justices, still too large a number to enable the payment of a uniform salary throughout Ohio. The proposed legislation radically reduced the number, which was necessary in order to place them on a salary basis. The Supreme Court's decision furnished the necessary impetus to bring about the passage of Amended House Bill No. 914 and its companion bill, Amended House Bill No. 937, by the 102nd General Assembly.

### THE COUNTY COURT LAW

Amended House Bill No. 914 provides for a county court in each county in which the territorial jurisdiction of a municipal court or municipal courts is not co-extensive with the boundaries of the county. The county court has jurisdiction in all territory in the county not subject to the territorial jurisdiction of any municipal court.<sup>3</sup>

The county court has jurisdiction in motor vehicle violations, other misdemeanors and in all other actions in which a justice of the peace court had jurisdiction under Chapters 1909, 1917, 1919, 1923, 2329, 2931, 3111, 3305, 3707, 3771, 3773, 3781, 4143, and 4513 of the Ohio Revised Code. All actions in a county court are to proceed in the manner provided for proceedings in a justice of the peace court under Chapters 1911, 1913, 1915, 1917, 1921, 2335, 2933, 2935, and 2937, of the Ohio Revised Code.<sup>4</sup>

The county court has exclusive original jurisdiction in civil actions for the recovery of sums not exceeding one hundred dollars, and concurrent jurisdiction with the court of common pleas for the recovery of sums over one hundred and not exceeding three hundred dollars.<sup>5</sup>

The area served by a county court is called the county court district. The number of judges for each district is determined by the population of the district. Districts not exceeding 30,000 population have one judge; districts exceeding 30,000 but not exceeding 60,000 population, two judges; districts exceeding 60,000 but not exceeding 90,000 population, three judges; districts exceeding 90,000 but not exceeding 120,000 population, four judges; districts exceeding 120,000 but not exceeding 150,000 population, five judges; districts exceeding 150,000 but not exceeding 360,000 population, eight judges; and districts exceeding 360,000 population, twelve judges.<sup>6</sup>

In county court districts hearing cases involving motor vehicle violations which occur on the Ohio Turnpike, the court of common pleas

<sup>3</sup> OHIO REV. CODE §1907.11 (Hamilton county has its own peculiar jurisdiction which constitutes an exception to this section—see OHIO REV. CODE §1901.02).

<sup>4</sup> OHIO REV. CODE §1907.112 (Note: This section gives county courts the same jurisdiction that justice courts had in the chapters specified. In Am. H. B. No. 937 these chapters were amended by substituting county courts for justice courts; thus county courts are given the same jurisdiction twice.)

<sup>5</sup> OHIO REV. CODE §1909.04 (Amended in Am. H. B. No. 937).

<sup>6</sup> OHIO REV. CODE §1907.041.

with the consent of the board of county commissioners may provide for the election of one judge for each 20,000 population in addition to those allowed under the regular formula.<sup>7</sup>

The law specifies that a county court judge during his term of office must be a qualified elector and a resident of the county court district to which he is elected or appointed. Effective January 1, 1963, every judge must be a lawyer with at least one year of practice except that a candidate to succeed himself would not be required to have this qualification.<sup>8</sup>

All candidates for county court judge are nominated by petition. The first election will be held in November, 1957 for a term to begin on January 1, 1958 and to end on December 31, 1958.<sup>9</sup> The regular term for county court judges will be for four years. The first election for the regular term will be held at the general election in 1958 for the term to commence on January 1, 1959.<sup>10</sup> All vacancies in county courts will be filled by the governor in accordance with Ohio Revised Code §1907.051.<sup>11</sup>

The law provides that in counties having more than one county court judge, the court of common pleas shall divide the district into areas of separate jurisdiction and shall designate the area in which each judge shall have jurisdiction. Each area will be made up of one or more townships, and areas in a county are to be as equal in population as it is possible to make them. In counties having only one county court judge, the area of jurisdiction will consist of the entire county court district. The jurisdiction of each county court judge is limited to causes of action arising in his area of jurisdiction.<sup>12</sup>

Judges will receive as compensation \$1,500 per annum plus an additional amount equal to three cents per capita of the population of the county court district as determined by the last federal decennial census. Such additional amount can not exceed \$2,500 per annum.<sup>13</sup> The law further provides that the board of county commissioners may provide for payment of an additional sum not to exceed \$1,000 to each county court judge.<sup>14</sup> Thus, the maximum that could be paid under the law is \$5,000 per year.

Under the law a county court judge is a part-time judge and is disqualified from the practice of law only as to matters pending or originating in the county court during his term of office.<sup>15</sup>

---

<sup>7</sup> OHIO REV. CODE §1907.042.

<sup>8</sup> OHIO REV. CODE §1907.051.

<sup>9</sup> OHIO REV. CODE §1907.052.

<sup>10</sup> OHIO REV. CODE §1907.051.

<sup>11</sup> OHIO REV. CODE §1907.041.

<sup>12</sup> OHIO REV. CODE §1907.071.

<sup>13</sup> OHIO REV. CODE §1907.081.

<sup>14</sup> OHIO REV. CODE §1907.082.

<sup>15</sup> OHIO REV. CODE §1907.081.

The county must pay all of the compensation of its county court judges<sup>16</sup> and the board of county commissioners must provide suitable court and office space<sup>17</sup> and a docket<sup>18</sup> for each county court judge.

The law provides that both the sheriff and the township constables are ministerial officers of the county court in all civil and criminal cases in which the court has jurisdiction.<sup>19</sup>

#### OPERATION OF THE LAW

County courts will be established in 54 Ohio counties as of January 1, 1958.<sup>20</sup> On the basis of the 1950 census figures there will be 90 judges in these courts serving about 1,950,000 persons. Hamilton County with eight judges, will have the most judges. Thirteen counties will have only one judge. In Hamilton County the eight judges will serve 220,000 persons, contrasting to Ottawa County where one judge will serve only 598 persons. The high salary under the formula<sup>21</sup> will be \$4,000 which will be paid to eight judges in Hamilton County, three judges in Belmont County, three judges in Mahoning County, four judges in Lucas County and five judges in Montgomery County. The low salary under the formula will be \$1,517.94 which will be paid to one judge in Ottawa County.

Since both Amended House Bill No. 914 and Amended House Bill No. 937 consisted mainly of a substitution of "county court" for "justice of the peace court" the actual operation of the county court will be similar to that of the justice of the peace court. The main differences between the two courts are the method of election, territorial jurisdiction, qualifications of the judge, salary provisions, and the addition of the county sheriff as ministerial officer of the county court.

#### QUESTIONS ARISING ON THE LAW

It is inevitable that future legislature will find need to amend sections of the county court law. The fact that it was necessary to include a great number of code sections in order to enact this law made the possibility of mechanical errors an ever present danger. The fact that the Legislature did not have very much time in which to prepare and enact this law makes it possible that inconsistencies and conflicts may emerge. Already some questions have been raised as to the operation of the law. For example, while it was the intention of the Legislature to give county courts all of the jurisdiction that was enjoyed by justice of the peace courts, there are many sections of the Revised Code referring to justices

---

<sup>16</sup> OHIO REV. CODE §1907.081.

<sup>17</sup> OHIO REV. CODE §1907.071.

<sup>18</sup> OHIO REV. CODE §1907.101.

<sup>19</sup> OHIO REV. CODE §§509.05 and 1907.511.

<sup>20</sup> Effective January 1, 1958, there will be 35 counties in which the jurisdiction of a municipal court or courts will be county wide. (Hamilton county will have both a municipal court and a county court.)

<sup>21</sup> OHIO REV. CODE §1907.081.

of the peace that were not amended.<sup>22</sup> Other questions have been raised by requests for opinions of the attorney general on certain aspects of the county court law with the following answers resulting.

Part 1 of the syllabus of 1957 Ohio Att'y Gen. No. 814 reads, "The office of justice of the peace in Washington County, and the jurisdiction of such officers will be unaffected by the enactment of Amended House Bill No. 914, 102nd General Assembly, until January 1, 1958, on which date such office will be abolished."

In 1957 Ohio Att'y Gen. 1018 the attorney general held, "There is no requirement under the provisions of Section 1907.071, Revised Code, that the location where a county court judge shall hold court be designated by the court of common pleas at a place within the area of jurisdiction designated by the court for such county court judges."

In 1957 Ohio Att'y Gen. 812, in ruling on certain aspects of the election and salary provisions of the county court law, the syllabus states that:

1. Under the provision of Section 1907.051 and 1907.052, Revised Code, county court judges are required to be elected by the electors of the entire county court district in which the office of such judge is created and not by the electors of the "area of jurisdiction" designated as provided in Section 1907.071, Revised Code, for particular judges in counties having more than one such judge.

2. There is no requirement in Chapter 1907., Revised Code, that a county court judge be a resident elector of the "area of jurisdiction" which he may be designated to serve as provided in Section 1907.071, Revised Code, but such judge is required under the provisions of Section 1907.051, Revised Code, to be a qualified elector and resident of the county court district in which he is elected or appointed.

3. Section 1907.082, Revised Code, authorizing certain additional compensation by allowance by the county commissioners to "each" county court judge requires such allowance to be uniform within the county court district concerned.

In offering this opinion the Attorney General notes that in regard to the provisions of §1907.082 "a serious constitutional question is encountered." This question arises because §1907.082 authorizes the board of county commissioners to pay each judge an additional \$1,000 per year salary. This provision closely resembles the provision in the salary section of the justice of the peace law which was held unconstitutional in the *Neff* case.<sup>23</sup>

It should be pointed out, however, that this provision is not unlike the provision contained in the Uniform Municipal Court Act which authorizes

---

<sup>22</sup> For example, see OHIO REV. CODE §§3.11, 505.02, and 505.03.

<sup>23</sup> *Neff v. Board of County Commissioners*, 166 Ohio St. 360, 142 N.E. 2d 658 (1957).

the legislative authority to prescribe additional compensation.<sup>24</sup>

The legislative purpose in establishing exclusive areas of jurisdiction within the county district was to eliminate concurrent jurisdiction of the county courts and to avoid as much as possible the evil of allowing an arresting officer to select the forum in which the defendant is to be tried. The only alternative to this proposal would have been a legislative determination of the actual areas in which each court was to operate.

It is possible that clarification will have to be made in other areas of the county court law. For instance, §1907.071 of the Revised Code limits the jurisdiction of a county court judge to causes of action arising in his "area of jurisdiction," whereas other sections give the judge certain county-wide jurisdiction.<sup>25</sup>

Although both the sheriff and the township constable are made ministerial officers of the county court, there are many sections which specify that the constable shall take some action without any reference to the sheriff.<sup>26</sup>

There are many sections in the municipal court, mayor's court, and police court laws in which the references to justice of the peace statutes have not been amended.<sup>27</sup> The question arises as to whether it can be inferred that, although not amended, the references to justices of the peace will amount to references to county courts.

#### CONCLUSION

The county court law was enacted to meet the challenge posed by the invalidation of the justice of the peace salary provision and to provide a court which would not be handicapped by the inadequacies which have appeared in justice of the peace court operation through the years, which would be staffed by competent persons, and which would thereby command the respect of the general public.

Although the actual operation of the county court will closely resemble that of the justice of the peace court there are certain differences that should make the county court a better forum of justice.

First, there is the provision that effective January 1, 1963, every county court judge shall have been admitted to the practice of law in the state and shall have been engaged in the practice of law in the state for at least one year prior to his election or appointment.<sup>28</sup> This provision makes it probable that county court judges in the future will have had some background in the law. Although the "grandfather clause" would allow a non-lawyer to continue in office it would seem that such non-lawyer would have to display some ability in order to hold his office.

---

<sup>24</sup> OHIO REV. CODE §1901.11.

<sup>25</sup> For example, see OHIO REV. CODE §§1909.02, 1909.06, 3305.06, 3771.06, 3773.22 and 3781.04.

<sup>26</sup> OHIO REV. CODE §§509.05, 1907.511; also OHIO REV. CODE §§1711.35, 1907.031, 1907.151, 1907.191, 1907.201, 1907.211, 1909.02 and 2933.03.

<sup>27</sup> For example, see OHIO REV. CODE §§1901.13, 1903.01, 1905.02.

<sup>28</sup> OHIO REV. CODE §1907.051.

Second, the county court judge will be elected from a court district, not a township as was the case with justices of the peace.

Third, the county court judge will be paid a fixed salary, not fees.

Fourth, the county sheriff will be ministerial officer of the court in addition to the constable.

The Legislature, realizing that perfect legislation is seldom attained in a first draft, adopted House Joint Resolution Number 51 requesting the Legislative Service Commission to make a study of the Ohio minor court system and to report back to the 103rd General Assembly. As has been pointed out, some minor defects have already been found although it is believed that by this legislation a major step has been taken toward correcting the imperfections existing in the justice of the peace system. Eventually, it may be possible for the county courts and municipal courts to be integrated into one system of minor courts which will adequately serve the greatly varying needs for minor courts. Thus a community might have a full time minor court of record or a part time minor court of record or a part time court to handle minor claims and offenses allowing major claims and offenses to be handled by the higher courts.

The importance of minor courts to the entire judicial system was well stated by Chief Justice Arthur T. Vanderbilt in an address given before the Assembly of States in Chicago, Illinois, on December 7th, 1956:

First, I should like to speak of what I regard as the most important court in the country, and I refer, of course, to the local criminal court of first instance, whether it is known as the justice of the peace court or the police court or the municipal court or whatever name it may be known by, because I really believe that this court, in all of its branches throughout the country, is by all odds the most important court that we have, and incidentally, it is the most neglected court.

It is what people see in the traffic courts, the police courts, the municipal courts and justice of the peace courts that alarms me. Most of those courts are run in a very happy-go-lucky, sadly outmoded manner. In the first place, I don't see how either you or I can have much respect for a court in which the judge's fees depend on the 'take' from the defendants, and in most of the justice of the peace courts of this country, the fees of the judge are paid out of what the defendant pays. In other words, the judge has a personal stake in the outcome of every case. We wouldn't tolerate that for a minute in any general court in the state, not to mention the Supreme Court. Why do we put up with it in our justice of the peace courts? That can easily be changed by simple statute.

Ohio has now taken the first step suggested. Undoubtedly, the necessary corrections and improvement of this legislation will be accomplished as the problems are again presented to the Legislature for solution.